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October 11, 2022

Via ECF and Hand Delivery

The Honorable Nicholas Garaufis
 United States District Court for the
 Eastern District of New York
 225 Cadman Plaza East, Room 1426 S
 Brooklyn, NY 11201

Re: *In Re: Exactech Polyethylene Orthopedic Products Liability Litigation*
 MDL No.: 3044

Dear Judge Garaufis:

I represent seventeen (17) plaintiffs with cases in suit involving the recalled Exactech knees and hips that have been transferred to you for MDL management. Since many of our cases were pending in the E.D.N.Y., I had filed the petition with the Judicial Panel on Multidistrict Litigation seeking an MDL in this District.

I hope it is not presumptuous for me to request that Your Honor conduct an initial conference as soon as practicable. There is a parallel state court consolidation in Gainesville, Florida, Alachua County before Judge Donna M. Keim. In that litigation, one case was filed as early as June 2021 (prior to the product recall) and the trial Judge there set a trial date in November 2023 for a case involving the GXL Hip liner, one of the recalled components at issue. (See August 31, 2022, Order Scheduling Pretrial Conference and Jury Trial attached herein as Exhibit 1). Accordingly, the litigation is somewhat more advanced and was formally consolidated on September 14, 2022, with

approximately 54 cases in suit to date. (See Order Coordinating Exactech Hip, Knee and Ankle Implant Cases attached herein as Exhibit 2).

An Order establishing an ESI Protocol was entered on September 20, 2022, as well as a Protective Order on September 27, 2022. (See Stipulated Order Re: Discovery of Electronically Stored Information and Protective Order attached herein as Exhibits 3 and 4). My firm and many of the lawyers with cases in this MDL have been in communication with the Florida lawyers, and the lawyers appointed to be co-lead counsel in the Florida consolidated action have reached out asking if the lawyers anticipated to be active in the MDL would be agreeable to sharing an electronic vendor to host the documents being produced in that litigation. It makes perfect economic sense to do so, but pivotal decisions on which vendor and cost sharing agreements need to be reached soon. Counsel for Exactech have also expressed a desire for the MDL to coordinate with the Florida litigation to avoid duplicative discovery. We believe coordination is often advisable while recognizing certain circumstances there can be reasons for differing. The Federal Judicial Center also recommends federal state coordination when appropriate. See <https://www.fjc.gov/sites/default/files/2014/Coordinating-Multijurisdiction-Litigation-FJC-2013.pdf>

However, until Your Honor appoints leadership in your new MDL, none of the lawyers have express authority to reach such an agreement on choice of vendors, or to agree to any of the other orders and discovery issues being addressed in Florida state court that involve many of the same issues we will be facing in the MDL. Thus, we respectfully request that Your Honor set a conference at your earliest convenience and an expedited procedure for selection of a Plaintiffs' Steering Committee and leadership counsel.

Respectfully Submitted,



Ellen Relkin

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All counsel of record in the MDL on annexed service list

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

IN RE: EXACTECH POLYETHYLENE
ORTHOPEDIC PRODUCTS LIABILITY
LITIGATION

MDL No. 3044

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George Wilson et al v. Exactech, Inc., E.D. Arkansas, C.A. No. 4:22-cv-00136

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Richard Reilly v. Exactech, Inc., et al, C.D. California, CA. No. 2:22-cv-04106

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***Daniel Carson v. Exactech, Inc. et al*, D. Colorado, C.A. No. 1:22-cv-00919**

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***Laqueisha Carolina v. Exactech, Inc., et al*, D. Colorado, CA. No. 1:22-cv-01511**

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***Clayton Wilder v. Exactech, Inc., et al*, S.D. Indiana, CA. No. 1:22-cv-01237**

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***Geraldine Billups v. Exactech, Inc.*, E.D. Louisiana, C.A. No. 2:22-cv-01410**

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***Donald McBride et al v. Exactech, Inc. et al*, D. Maryland, C.A. No. 1:22-cv-00615**

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Robert Hodge Jr. et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-01026

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Rex Foxwell et al v. Exactech, Inc. et al, D. Maryland, C.A. No. 1:22-cv-01027

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Debra Meneese v. Exactech, Inc. et al, E.D. Missouri, C.A. No. 4:22-cv-00546

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Annette Alberti et al v. Exactech, Inc., E.D. New York, C.A. No. 2:22-cv-00351

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***Jimmy Afzali v. Exactech, Inc. et al*, E.D. New York, C.A. No. 2:22-cv-03455**

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***Joti Allen v. Exactech, Inc., et al*, E.D. New York, C.A. No.: 2:22-cv-03867**

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Domenic Dellanno, et al v. Exactech, Inc., et al., E.D. New York, C.A. No.: 2:22-cv-04243

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Kevin Patterson v. Exactech, Inc., S.D. New York, C.A. No. 1:21-cv-06231

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James Burke v. Exactech, Inc. et al, S.D. New York, C.A. No. 1:22-cv-02086

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***Jacob Brickman v. Exactech, Inc., et al*, E.D. Pennsylvania, C.A. No. 2:22-cv-02339**

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***Melissa Davis v. Exactech, Inc. et al*, D. South Carolina, C.A. No. 3:22-cv-01236**

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